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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/971,797 | 10/05/2001 | Michael Kauschke | 34303/49 | 3584 |
| 7590 | 09/08/2004 | | EXAMINER | |
| Neal L. Rosenberg, Esq. AMSTER, ROTHSTEIN & EBENSTEIN 90 Park Avenue New York, NY 10016 | | | YAO, SAMCHUAN CUA | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1733 | |

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|------------------------|---------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/971,797 | KAUSCHKE ET AL. |
| | Examiner | Art Unit |
| | Sam Chuan C. Yao | 1733 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 26 July 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-10, 12 and 14-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-10, 12 and 14-35 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the specification fails to provide a proper antecedent basis to “*polypropylene homopolymer*” (emphasis added) and “*aspect ratio*”.

Claim Objections

2. Claim 10 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-10, 12, and 14-35 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The original disclosure does not provide a sufficient support to a regular bonding pattern recited in “(i)”, because the bonding pattern recited in “(i)” reads on a

bonding shape having a symmetrical cross or a symmetrical X configuration. The original disclosure fails to reasonably conveyed to one in the art to form a fabric having a bonding pattern with a configuration of a symmetrical cross or symmetrical X.

The original disclosure also does not provide a sufficient support to a regular bonding pattern recited in "(ii)", because the bonding pattern recited in "(ii)" reads on a bonding configuration such as a non-symmetrical cross or a star. Equally important, the recited aspect ratio also reads on an "aspect ratio" of (for example)10⁶:1. Moreover, bonding patterns illustrated in figures 2-3 appear to show that, a majority of adjacent bonding points (yellow-green and red) are parallel to each other as opposed being non-parallel bonding points (orange). In addition, the original disclosure also fails to provide any support for providing a bonding pattern having bonding points formed by a "combination" of "(i)" and "(ii)". In fact, bonding point "(i)" and bonding point "(ii)" are incompatible from each other.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-10, 12, and 14-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 16, 20-21, and 24 are indefinite, because it is unclear what is intended by the phrase "*adjacent bonding points*" recited in each of these independent

claims. For example, in figure 2, the distance between yellow-green colored bonding points and a red colored bonding point appears to be close to each other. Should they be considered to be adjacent bonding points? If not, why not? How about bonding points (yellow-green and red) illustrated in figure 3? Should the yellow-green colored bonding points considered to be adjacent to the red colored bonding point, because there is no intervening bonding points between the yellow-green colored bonding points and the red colored bonding point. **What criterion/criteria is/are needed for bonding points to be considered as adjacent bonding points?**

With respect to claim 10, a dependent claim must further limit the recited limitations to which it is dependent to. Otherwise, the recited dependent would not only be redundant, but also confusing. In present situation, claim 10 would appear to an alternative characterization of basically the same limitation. If it is Applicant's contention that, this claim further limit claim 1, it is suggested for Counsel to provide an actual example where the limitation in claim 1 step (B) would not necessarily have the recited characteristic in claim 10.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-3, 10, 12, 14-16, 19-21, and 24-32 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Lunn et al (US 4,999,235). See column 3 lines 22-32.

Note this figure is an actual "*optical micrograph*" of a non-woven fabric.

D_y (edge to edge) is 13 mm; D_x (edge to edge) 17 mm

D_y (center to center) is 24 mm; D_x (center to center) 30 mm

D_y (center to edge) is 20 mm; D_x (center to edge) 31 mm

(Vertical to Vertical) $_y$ (edge to edge) is 28 mm;

(Horizontal to Horizontal) $_y$ (edge to edge) is 42 mm or

(Horizontal to Horizontal) $_x$ (edge to edge) is 35 mm.

Note: as clearly illustrated in figure 5, since surrounding vertically oriented bonding points (42) are closest to a horizontally oriented bonding point (40), only surrounding vertically oriented bonding points (42) are taken to be adjacent to a reference horizontally oriented bonding point (40). In other words, the surrounding horizontally oriented bondings (40) are not considered to be adjacent to a reference horizontally oriented bonding point. Therefore, a bonding pattern recited in "(ii)" fails to define over a bonding pattern illustrated in figure 5 taught by Lunn et al.

Note further that, Lunn et al also teaches using polypropylene (taken to be a homopolymer) filaments (abstract; col. 3 lines 23-30).

9. Claims 1-10, 12, 14-22 and 24-32 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by WO 00/78883 A1. See figures 2 and 5, page 6 lines 5-32; page 7 full paragraph 1, page 9 lines 15-20, page 10 lines 7-13, page 12 lines 4-7, and page 14 lines 7-10.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 4-5, 8-9, 17-18 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lunn et al (US 4,999,235) as applied to claim 1, 16, or 21 above in numbered paragraph 5 or 6.

Since recited bonding configurations are conventional in the art, these claims would have been obvious in the art.

Allowable Subject Matter

12. The following is a statement of reasons for the indication of allowable subject matter:

Although the recited bonding configuration recited in claim 23 and 33-35 are known per se in the art, there is no motivation in the art to use the configuration recited in this claim to any of the above references.

13. Claim 23 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

14. Claims 33-35 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

15. Applicant's arguments filed on 06-07-04 have been fully considered but they are not persuasive.

Counsel argues on page 13 that "*Lunn shows a central bond point 40 or 42 having adjacent thereto four similar bond points 40 or 42 and four different bonding points 42, 40.*" . However, as noted above, since surrounding vertically oriented bonding points (42) are closest to a horizontally oriented bonding point (40), only surrounding vertically oriented bonding points (42) are taken to be adjacent to a horizontally oriented bonding point (40).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Chuan C. Yao whose telephone number is (571) 272-1224. The examiner can normally be reached on Monday-Friday with second Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on (571) 272-1156. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sam Chuan C. Yao
Primary Examiner
Art Unit 1733

Scy
09-01-04